

City of Cuyuna, Minnesota

ORDINANCE NO. 804

Peddler's

May 6, 2003

CUYUNA Ordinance No. 804
Peddlers, Solicitors, Transient Merchants

An ordinance relating to Peddlers, Solicitors, and Transient Merchants and exercising the City's authority to regulate the nuisance created by such business practice practices under the city's general police powers and as specifically authorized by Minnesota Statutes Sections 329.06, 329.15 , 412.221(subd.19) and 437.02.

THE CITY COUNCIL OF the City of CUYUNA Ordains:

SECTION 1. Definitions and Interpretation. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter, and vice-versa. The term "shall" means mandatory and the term "may" is permissive. The following terms shall have the definitions given to them:

Subdivision 1. Person. The term "Person" shall mean any natural individual, group, organization, corporation, partnership, or association. As applied to groups, organizations, corporation, partnerships, and associations, the term shall include each member, officer partner, associate, agent or employee.

Subdivision 2. Peddler. The term "peddler" shall mean a person who goes from place-to-place, for the purpose of offering for sale, displaying or exposing for sale, selling or attempting to sell, and delivering immediately upon sale, the goods, wares, products, merchandise or other personal property, that the person is carrying or otherwise transporting.

Subdivision 3. Solicitor. The term "solicitor" shall mean a person who goes from place-to-place for the purpose of obtaining or attempting to obtain orders for goods, wares, products, merchandise, other personal property, or services, of which he or she may be carrying or transporting samples, or that may be described in a catalog or by other means, and for which delivery of performance shall occur at a later time. The absence of samples or catalogs shall not remove a person from the scope of this provision if the actual purpose of the person's activity is to obtain or attempt to obtain orders as discussed above. The term solicitor shall mean the same as the term canvasser.

Subdivision 4. Transient Merchant. The term "transient merchant" shall mean a person who temporarily sets up business out of a vehicle, trailer, boxcar, tent, other portable shelter, or empty store front for the purpose of exposing or displaying for sale, selling or attempting to sell, and delivering , goods, wares, products merchandise, or other personal property, and who does not remain or intend to remain in any one location for more than 30 consecutive days.

Subdivision 5. Regular Business Day. Monday through Friday. Holidays defined by State law shall not be counted as regular business days.

SECTION 2. Exceptions to Definitions. For the purpose of the requirements of this ordinance, the terms "peddler," "solicitor," and "transient merchant" shall not apply to any person selling or attempting to sell at (1) wholesale any goods, wares, products, merchandise, or other personal property, to a retailer of the item(s) being sold by the wholesaler. The terms also shall not apply to any person who makes initial contacts with other people for the purpose of (2) establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person (3) making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route. In addition, persons conducting the type of sales commonly known as (4) garage sales, (5) rummage sales, or (6) estate sales, as well as those persons participating in an (7) organized multi-person bazaar or (8) flea market, shall be exempt from the definition of peddlers, solicitors, and transient merchants, as shall be anyone (9) conducting an auction as a properly licensed auctioneer, or any (10) officer of the court conducting a court ordered sale. Finally, (11) Girl Scouts or Boy Scouts, (12) Fire Departments, (13) their auxiliary groups, and (14) non-profit school and church groups are exempt from the requirements of this Ordinance. Exemption from the definitions for the scope of this ordinance shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

SECTION 3. Licensing.

Subdivision 1. County License Required. No person shall conduct business as a peddler, solicitor, or transient merchant within the city limits without first having obtained the appropriate license from the County as required by M.S. Chapter 329 as amended.

Subdivision 2. City License Required. Except as otherwise provided for by this ordinance, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city.

Subdivision 3. Application. Application for a city license to conduct business as a peddler or transient merchant shall be made at least fourteen (14) regular business days before the applicant desires to conduct business. Application for a license shall be made on a form approved by the city council available from the office of the city clerk. All applications shall be signed by the applicant. All applications shall include the following information:

- a. Applicant's full name and date of birth.
- b. All other names under which the applicant conducts business or to which applicant officially answers.

- c. A physical description of the applicant (hair color, eye color, height, weight, distinguishing marks and features)
- d. Full address of applicant's permanent residence.
- e. Telephone number of applicant's permanent residence.
- f. Full legal name of any and all business operation(s) owned, managed or operated by applicant, or for which the applicant is an employee or agent.
- g. Full address of applicant 's regular place of business (if any).
- h. Any and all business related telephone number(s) of the applicant.
- i. The type of business for which the applicant is applying for a license.
- j. Whether the applicant is applying for an annual or daily license.
- k. The dates during which the applicant intends to conduct business, and if the applicant is applying for a daily license, the number of days he or she will be conducting business in the city. (Maximum: 30 consecutive days for a daily license. All other licenses on an annual basis.)
- l. Any and all address(es) and telephone number(s) where the applicant can be reached while conducting business within the city, including the location where a transient merchant intends to set up business.
- m. A statement as to whether or not the applicant has been convicted within the last five years of any felony, gross misdemeanor, or misdemeanor for violation of any state or federal statute or any local ordinance, other than traffic offenses.
- n. A list of the Three (3) most recent locations where the applicant has conducted business as a peddler or transient merchant.
- o. Proof of any required county license.
- p. Written permission of the property owner or the property owner's agent for any property to be used by a transient merchant.
- q. A general description of the items to be sold or services to be provided.
- r. All additional information deemed necessary by the council.

Subdivision 4. Fee. All applications for a license under this ordinance shall be accompanied by the fee established in the city's fee schedule as adopted from time to time by an ordinance passed by the council.

- a. Applicants for a permit under this ordinance must file with the City clerk an application in writing on a form to be furnished by the City Clerk accompanied by a fee of \$25.00 per day; \$50.00 per month; and \$100.00 per season, which shall consist of Three(3) Months. Additionally, henceforth, the amounts for fees for said issuance shall be determined simultaneously with the

pronouncement of all city fees, and may be amended by Motion or Resolution of the City Council.

- b. Transient Merchant Park. Any owner, contract purchaser or lessee of property zoned B1, B2 or B# by the City Zoning Ordinance, and after obtaining a conditional use permit, allowing Ten (10) or more Transient Merchants on the property at one time shall apply for a Transient Merchant Park Permit and pay a fee of \$25.00, in addition to other fees enumerated herein.

Subdivision 5. Procedure. Upon receipt of the completed application and payment of the license fee, the city clerk shall forward the application to the council within Two (2) regular business days of receipt. An application shall be determined to be complete only if all required information is provided. If the clerk determines that the application is incomplete, the clerk shall inform the applicant of the required necessary information which is missing. The city shall review the application and order any investigation, including background checks, necessary to verify the information provided with the application. Within twenty (20) regular business days of receiving the application from the city clerk, the city shall determine whether or not to issue the license. If the city approves the application, the clerk shall issue a license to the applicant. If the city rejects the application, the applicant shall be notified in writing of the city's decision, the reason for the denial, and of his or her right to appeal the denial by requesting, within twenty (20) days of receiving the city's notice of rejection, a public hearing to be heard by the City within twenty (20) days of the request. The Final decision of the council following the public hearing shall be appealable by petitioning the Minnesota Court of Appeals for a Writ of Certiorari.

Subdivision 6. Duration. An annual license granted under this ordinance shall be valid for one calendar year from the date of issue. All other licenses granted under this ordinance shall be valid only during the time period indicated on the license.

SECTION 4. License Exemptions. No license shall be required for any person to sell or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated or raised on any farm. No license shall be required of any person going from place-to-place when such activity is for the purpose of exercising that person's State or Federal Constitutional rights (i.e., freedom of speech, press, religion e`tc.) except that this exemption may be lost if the person's exercise of Constitutional rights is merely incidental to a commercial activity. Professional fund raisers working on behalf of an otherwise exempt person or group shall not be exempt from the licensing requirements of this ordinance.

SECTION 5. Ineligibility for License. The following shall be ground for denying a license under this ordinance:

- A. The failure of the applicant to obtain and show proof of having obtained any required County license.
- B. the failure of the applicant to truthfully provide any of the information requested by the City as a part of the application, or the failure to sign the application, or the failure to pay the required fee at the time of application.
- C. The conviction of the applicant within the past five years from the date of application, for any violation of any Federal or State statute or regulation, or of any local ordinance, or nuisance ordinances, which adversely reflects on the person's ability to conduct the business for which the license is being sought in an honest and legal manner or in a manner that will not adversely affect the health, safety, and welfare of the residents of the City. Such violations shall include but not be limited to: burglary, theft, larceny, swindling, fraud, unlawful business practices, and any form of actual or threatened physical harm against another person.
- D. The revocation within the past five years of any license issued to the applicant for the purpose of conducting business as a peddler, solicitor or transient merchant.
- E. The applicant is determined to have a bad business reputation. Evidence of a bad business reputation shall include, but not be limited to, the existence of more than One (1) complaints against the applicant with the Better Business Bureau, the Attorney General's Office, or other similar business or consumer rights office or agency, within the preceding twelve (12) months, or Four (4) such complaints filed against the applicant within the preceding Five (5) years.

SECTION 6. Suspension and Revocation. Any license issued under this section may be suspended or revoked at the discretion of the City Council for violation of any of the following:

- A. Fraud, misrepresentation, or incorrect statements on the application form.
- B. Fraud, misrepresentation or false statements made during the course of the licensed activity.
- C. Conviction of any offense for which granting of a license could have been denied under Section Five (5) of this ordinance.
- D. Violation of any provision of this ordinance.

The suspension or revocation of an license issued for the purpose of authorizing multiple persons to conduct business as peddlers or transient merchants on behalf of the licensee,

shall serve as a suspension or revocation of each such authorized person's authority to conduct business as a peddler or transient merchant on behalf of the licensee whose license is suspended or revoked.

Subdivision 1. Notice. Prior to revoking or suspending any license issued under this ordinance, the city shall provide the license holder with written notice of the alleged violation(s) and inform the licensee of his her right to a hearing on the alleged violation. Notice shall be delivered in person or by mail to the permanent residential address listed on the license application, or if no residential address is listed, to the business address provided on the license application.

Subdivision 2. Public Hearing. Upon receiving the notice provided in Subdivision 1, the licensee shall have the right to request a public hearing. If no request for a hearing is received by the city clerk within Ten (10) regular business days following the service of the notice, the city may proceed with the suspension or revocation. For the purpose of mailed notices, service shall be considered complete as of the date the notice is placed in the mail. If a public hearing is requested within the stated time frame, a hearing shall be scheduled within Thirty (30) days from the date of the request. Within Three (3) regular business days of the hearing, the city council shall notify the licensee of its decision.

Subdivision 3. Emergency. If in the discretion of the City Council, imminent harm to the health or safety of the public may occur because of the actions of a peddler or transient merchant licensed under this ordinance, the council may immediately suspend the person's license and provide notice of the right to hold a subsequent public hearing as prescribed in Subdivision 2 of this section.

Subdivision 4. Appeals. Any person whose license is suspended or revoked under this section shall have the right to appeal that decision in court.

SECTION 7. Transferability. No license issued under this ordinance shall be transferred to any person other than the person to whom the license was issued.

SECTION 8. Registration. All solicitors, and any persons exempt from the licensing requirements of this ordinance under Section 2, shall be required to register with the city. Registration shall be made on the same form required for a license application, but no fee shall be required. Immediately upon completion of the registration form, the City Clerk shall issue to the registrant a Certificate of Registration as proof of the registration. Certificates of Registration shall be non-transferable.

SECTION 9. Prohibited activities. No peddler, solicitor, or transient merchant shall conduct business in any of the following manners:

- A. Calling attention to his or her business or items to be sold by means of blowing any horn or whistle, ringing any bell, crying out, or by any other noise, so as to be unreasonably audible within any enclosed structure.
- B. Obstructing the free flow of either vehicular or pedestrian traffic on any street, alley, sidewalk or other public right-of-way.
- C. Conducting business in such a way as to create a threat to the health, safety and welfare of any individual or the general public.
- D. Conducting business before seven o'clock in the morning, or after nine o'clock at night.
- E. Failing to provide proof of license or registration, and identification, when requested, or using the license or registration of another person.
- F. Making any false or misleading statements about the product or service being sold, including untrue statements of endorsement. No peddler, solicitor, or transient merchant shall claim to have the endorsement of the City solely based on the City having issued a license or certificate of registration to that person.
- G. Remaining on the property of another when requested to leave, or to otherwise conduct business in a manner a reasonable person would find obscene, threatening, intimidating or abusive.

SECTION 10. Exclusion by placard. No peddler, solicitor, or transient merchant, unless invited to do so by the property owner or tenant, shall enter the property of another for the purpose of conducting business as a peddler, solicitor, or transient merchant when the property is marked with a sign or placard at least three and three-quarter inches (3-3/4") long and three and three-quarter inches (3-3/4") wide with print of at least 48 point in size stating "No Peddlers, Solicitors, or transient Merchants" or "Peddlers, Solicitors, and Transient Merchants Prohibited," or other comparable statement. No person other than the property owner or tenant shall remove, deface, or otherwise tamper with any sign or placard under this section.

SECTION 11. Violations and Penalties. Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and upon conviction of any violation shall be subject to a fine not to exceed seven hundred dollars (\$700) or a jail sentence not to exceed ninety (90) days, or both, plus the cost of Prosecution. Each day a violation exists shall constitute a separate violation for the purposes of this section.

SECTION 12. Repeal. All ordinances in conflict with this ordinance are hereby repealed.

SECTION 13. Separability. Should any section, clause, or portion of this ordinance be found invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, such finding shall not apply to any other section, clause, or portion of this ordinance, unless the court's findings specifically provide otherwise.

SECTION 14. Effective Date. This ordinance shall take effect immediately

Passed by the council this 6th day of May, 2003

Ruth Imberi, Mayor

ATTEST:

Bill Bedard, Clerk

SUMMARY OF CUYUNA ORDINANCE NO. 804
Peddlers, Solicitors, Transient Merchants

The following official summary of Ordinance No. 804 has been approved by the city council of CUYUNA as clearly informing the public of the intent and effect of this ordinance:

It is the intent and effect of the ordinance to regulate the nuisance created by Peddlers, Solicitors and Transient Merchants; and to provide a penalty for violation.

City License Required. Except as otherwise provided for by this ordinance, no person shall conduct business as either a peddler or a transient merchant without first having obtained a license from the city.

Registration. All solicitors, and any persons exempt from the licensing requirements of this ordinance, shall be required to register with the city. Registration shall be made on the same form required for a license application, but no fee shall be required.

A printed copy of the ordinance is available for inspection by any person at the office of the city clerk.

Passed by the council this 6th day of May, 2003.

Ruth Imberi, Mayor

ATTEST:

Bill Bedard, Clerk

Summary published in the Crosby-Ironton Courier on _____, 20__.